IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8451 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KHODIYAR COTTON INDUSTRIES

Versus

MANAGER GUJARAT STATE FINANCE CORPORATION

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Appearance:

1. Special Civil Application No. 8451 of 2003

MR SATYEN B RAWAL for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. Rule. Mr. H.S. Munsha, learned advocate waives

service of notice of Rule on behalf of the respondents. The present petition is filed under Article 226 of the Constitution of India, whereby the petitioner seeks to issue writ of this Court for getting directions against Gujarat State Finance Corporation (hereinafter referred to as "G.S.F.C." for the sake of convenience and brevity) to disburse Term Loan to the tune of Rs.30,77,000/- and Soft Loan to the tune of Rs.10,00,000/-.

2. Learned advocate appearing for the petitioner mainly submitted that the petitioner has applied for Term Loan and Soft Loan from GSFC. The petitioner is a partnership firm and is intending to run an industries of cotton ginning and pressing. The petitioner has altered its position by performing several procedure as required by G.S.F.C. for sanction of the loans. It is averred by the learned advocate for the petitioner that the petitioner has to apply to various authorities for certificate of title clearance, registration certificate from the Director of Small Scale Industries, registration certificate of partnership firm, valuation report of the immovable property of the petitioner from the authorised Valuer - Civil Engineer, permission of Non-agriculture Use of the land etc. and all these documents have been provided by the petitioner before G.S.F.C. from time to time. It is submitted by the learned advocate for the petitioner that upon due verification and fulfillment of the requirements as to the documents as stated hereinabove, ultimately G.S.F.C. sanctioned loans vide communication dated 3-10-2001, whereby G.S.F.C. sanctioned Term Loan to the tune of Rs.30,77,000/- and Soft Loan (NEF loan) to the extent Rs.10,00,000/-. It is contended by the learned advocate for the petitioner that there were certain conditions precedent for sanctioning the loans and conditions precedent have already been complied with including that of promoters' commitment. The petitioner has also purchased the land admeasuring 4046 sq. mtrs. bearing Revenue Survey No. 293 of Rajsitapur at the cost of Rs.4,23,500/- and the certificate of structural condition of the building has also been issued in favour of the petitioner by the Civil Engineer/Valuer. Thus, the petitioner has complied with and fulfilled all the conditions as envisaged by G.S.F.C. for disbursement of the loans. Time and again the petitioner has approached but the loans have not been disbursed to the petitioner and the respondent should be directed to disburse the loans already sanctioned in favour of the petitioner.

3. The respondent G.S.F.C. has filed the affidavit. Learned advocate for the respondent has mainly submitted

that there two types of loans namely (i) Term Loan and Soft Loan which are usually given at lesser rate of interest. The aforesaid loans were sanctioned in favour of the petitioner by G.S.F.C. vide its letter dated 3-10-2001 on certain terms and conditions. It was further intimated to the petitioner by G.S.F.C. vide its letter dated 6-4-2002 to withdraw the aforesaid sanctioned loans. It is further submitted by the learned advocate for the respondent G.S.F.C. that aforesaid amounts of sanctioned loans were not withdrawn by the petitioner. On the contrary, for the reasons best known to the petitioner, he requested G.S.F.C. to extend the time for withdrawal of amounts of sanctioned loans and said request of the petitioner was turned down by G.S.F.C. vide its letter dated 15/17-7-2002. However, the petitioner once again addressed the letter dated 25-7-2002 to G.S.F.C. for extension of time for withdrawal of the amounts of loans sanctioned by G.S.F.C. and this second request of the petitioner was rejected by G.S.F.C. vide its letter dated 5-8-2002. It is submitted by the learned advocate for the respondent that aforesaid both decisions rejecting the requests of the petitioner were taken by the head office of G.S.F.C. at Gandhinagar and the petitioner was also informed that the request for extension of time for withdrawal of the amounts of sanctioned loans was granted. None the less, instead of withdrawing the aforesaid loan amounts, consistently the petitioner insisted for extension of time. From this behaviour and conduct of the petitioner, it is crystal clear that the petitioner was not interested to withdraw the amounts of sanctioned loans, at any point of time, for the reasons best known to him. The learned advocate for the respondent submitted that in spite of repeated refusal for extension of time for withdrawal of the amounts of sanctioned loan, the petitioner once again addressed the letter dated 24--10-2002 to the General Manager, G.S.F.C. for extension of time for withdrawal of loan amounts and ultimately time was extended by G.S.F.C. upto 31-3-2003. Thereafter, the petitioner was informed to approach State Bank of Saurashtra since G.S.F.C. was not in a position to disburse the amounts of the loans sanctioned in favour of the petitioner in near future. The letter dated 21-10-2002 was also written to the petitioner with specific instructions to approach State Bank of Saurashtra to avail credit facilities.

4. Learned advocate for the respondent submitted that because of adverse financial condition and weak cash flow, the decision was taken by G.S.F.C. on 3-7-2002 to the effect that no further disbursement be made by

G.S.F.C., copy of same is also placed on the record of this case along with the affidavit-in-reply. None the less, the petitioner was helped by the Sr. Officer of G.S.F.C. by way of providing credit facility by State Bank of Saurashtra but and the same was also not availed by the petitioner. Initially, though the loans were sanctioned the petitioner did not avail the same. It is also contended by the learned advocate for the respondent that G.S.F.C. is passing through a critical financial position as it has incurred heavy loss, as under :

| Year | Loss in Rs. |
|---|---|
| i. 2000-01 | 100.80 Crores |
| ii. 2001-02 | 126.85 Crores |
| iii. 2002-03 | 201.60 Crores |

5. He, therefore, submitted that the petitioner is not entitled to get disbursement of loans sanctioned on 3-10-2001 by G.S.F.C

6. Looking to the contentions raised by learned advocate for the respondent and the documents on record, one fact is very clear that the petitioner was granted loans on by G.S.F.C. vide its letter dated 3-10-2001, as aforesaid. Thereafter, it was consistently insisted by the petitioner for extension of time for withdrawn of the amounts of loans sanctioned and the letter dated 6-4-2002 was also written by G.S.F.C. intimating the petitioner to obtain the amounts of the loans, within a period of six months. But instead of withdrawing the amounts of loans, the petitioner has applied for extension of time for withdrawal of the amounts of loans, for the reasons best known to him. Similarly, second request of the petitioner for extension of time for withdrawal of loan amounts was also turned down by G.S.F.C. vide its letter dated 5-8-2002. Consistently the petitioner was in search of extension of time for withdrawal of amounts of loan sanctioned. From the record, it is further clear that decision was taken by G.S.F.C. on 3-7-2002 that due to adverse financial condition and weak cash flow, no further disbursement should be made by G.S.F.C.

7. Learned advocate for the petitioner mainly argued that there is estoppel on the part of the respondent G.S.F.C. Once loans are sanctioned to the petitioner, the same ought to have been disbursed to him as the petitioner has altered its position. He has relied on

Condition No. V regarding sanction of loan which is dated 3-10-2001, which reads as under :

"V : Promoters Commitments :

The directors/partners of the unit shall raise the required capital/deposit etc. in the manner mentioned hereunder which shall be maintained during the currency of the loan.

(a) Capital/Internal Cash Accruals :

(i) Capital of Rs.___ - ____ lacs be raised before initial disbursement of loan.

(ii) Capital of 6.92 lacs out of which 50% must be raised at the time of first disbursement. For disbursement upto 75% capital may be raised on matching basis and balance loan will be disbursed after raising full stipulated capital.

(b) Deposits :

(i) Interest fee deposits of Rs.__-___ lacs to be maintained.

(ii) Interest bearing deposit of Rs.0.65 lacs shall be raised a maintained during the currency of loan interest not exceeding 14.50% p.a.

(c) State Subsidy :

State Subsidy of Rs. ___ shall be maintained. In the event of the subsidy not being available as envisaged, the promoters shall undertake to bring in additional funds to the extent of the shortfall.

(d) Working capital :

Working capital of approximately Rs. __ lacs shall be arranged.

(e) Additional Funds, if any, required shall be raised by the unit at appropriate time, on terms acceptance to Corporation to meet the shortfall or over-run, if financing the cost of project or for working Capital.

(f) The promoters shall give an undertaking to the Corporation that as and when subsidy is received by the unit from DIC, the unit will arrange to pay towards squaring off the default/overdue, if any.

(g) Interest free deposit of Rs._____ in lieu of state subsidy shall be raised till the amount of subsidy is received."

8. Thus, in all the above sub-clauses of Condition No. V i.e. V(a) (i), B (i), (c), (d) and (g) instead of any figure there is dash i.e. no amount is inserted in the blank by G.S.F.C. Learned advocate appearing for the petitioners could not point out that there is any other agreement or correspondence whereby, G.S.F.C. has insisted capital investment by promoters, prior to sanction of loan amount.

9. Condition No. V, Clause (a) (i) provides that capital of Rs.___ - ____ lacs be raised before initial disbursement of loan. Clause (a) (ii) provides that capital of 6.92 lacs out of which 50% must be raised at the time of first disbursement.

10. It is averred by the learned advocate for the petitioner that huge capital is invested by the petitioner and therefore the petitioner has altered its position which creates estoppel on the part of the respondent. I afraid that, in fact, there is no such condition or condition precedent for capital investment of any amount. Condition referred hereinabove, does not refer any figure. On the contrary, instead of pointing out any figure in Condition No. V (a) (i) there is "-" (dash). Thus, no pre-investment by way of capital has been insisted by G.S.F.C. Similarly, second condition i.e. V (a) (ii), as rise of capital, by 50% of 6.92 lacs was insisted at the time of first disbursement. It may be noted that because of petitioner's application for extension of time, there was no first disbursement at all

and if there is no first disbursement, condition under Clause (a) (ii), was not required to be complied with. Therefore insistence on the part of the petitioner that the petitioner has invested very huge amount at the behest of G.S.F.C. is not correct and true. Whatever is done by the petitioner so far as investment by way of capital is concerned, is made at its own peril and risk. Therefore it never creates any estoppel on the part of the respondent. At this stage, a query was asked to advocate for the petitioner by the Court, whether the petitioner has any letter of G.S.F.C., whereby it can be said that G.S.F.C. has insisted as condition precedent, any type of capital investment prior to disbursement of loans. The prior advocate for the petitioner could not point out any such correspondence. None the less, the fact remains that G.S.F.C. has already insisted loans by more than one communications for disbursement of amounts of loans sanctioned but for the reasons best known to the petitioner, the same was not availed by the petitioner and the petitioner has avoided, withdrawal of amounts of the loans sanctioned and insisted for getting extension of time. This very fact takes out the respondent from estoppel. Similarly, Clause (b) (i) of above Condition No.V, provides interest fee deposits of Rs.__-___ lacs to be maintained. If the petitioner has altered its position because of above condition No. V (b), the petitioner has moved on its own and not at the behest of the respondent. Small applications have been made here and there by the petitioners for getting the land converted from agricultural use into nonagricultural use or has applied for getting certificate of small Scale Industries for its industry, are not such movements on the part of the petitioners so as to creates estoppel on the part of the respondent.

11. Learned advocate for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of The Gujarat State Financial Corporation V. M/s. Lotus Hotels Pvt. Ltd., reported in 1983 SUPREME COURT 848, wherein the principle of estoppel enunciated was made applicable and G.S.F.C. was directed to disburse the amount of loan sanctioned. The facts for arriving the said conclusion by the Hon'ble Supreme Court available in that case were (i) M/s. Lotus Hotels Pvt. Ltd. was called upon by the Gujarat State Financial Corporation for execution of equitable mortgage deed and to meet with other requirements, (ii) such mortgage deed was entered into between M/s. Lotus Hotels Pvt. Ltd. and the Gujarat State Financial Corporation, (iii) The Gujarat State Financial Corporation took the deposit of title deeds and became mortgagee, (iv) The respondent had also

called M/s. Lotus Hotels Pvt. Ltd. to get insurance of the property against fire, riot etc. at the considerable costs.

12. The judgment of the Hon'ble Supreme Court in the case of Lotus Hotel Private Ltd., Baroda Vs. Gujarat State Financial Corporation, reported in AIR 1981 Gujarat 212, is affirmed by the Hon'ble Supreme Court in AIR 1983 SC 848.

13. So far as the facts of the present case are concerned, none of the aforesaid steps have ever been taken by G.S.F.C. On the contrary, in the present case after the loans were sanctioned by G.S.F.C. vide letter dated 3-10-2001, one more letter dated 6-4-2002 was written by G.S.F.C. to the petitioner whereby the petitioner was intimated to avail and withdraw the amounts of the loans sanctioned. However, it was the petitioner who was always consistently in search extension of time for withdrawal of the amounts of the loans sanctioned vide letters dated 3-6-2002, 25-7-2002 and 14-8-2002. Thereafter, Sr. Officer of G.S.F.C. has tried to help the petitioner for availing the credit facility from State Bank of Saurashtra but the same was not availed by the petitioner and thereafter as narrated hereinabove, G.S.F.C. very huge loss has been incurred by G.S.F.C. consequently for three years;

| Year | Loss in Rs. |
|---|---|
| i. 2000-01 | 100.80 Crores |
| ii. 2001-02 | 126.85 Crores |
| iii. 2002-03 | 201.60 Crores |

14. Looking to the peculiar facts and circumstances of this case and considering the material on record as well as the submissions made by the learned advocate for the parties, and for the reasons stated hereinabove, I am of the considered opinion that no estoppel has been created on the part of the respondent. On the contrary, though the loans were sanctioned by G.S.F.C. vide letter dated 3-10-2001 the petitioner did not avail the same and it was insisted by the petitioner for extension of time for withdrawal of the amounts of loans sanctioned. Therefore, there is no substance in the petition. Accordingly, the present petition is dismissed. Rule is

discharged with no order as to costs.

(D.N. Patel, J.)

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